...PREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
APR 10 1965
JOHN F. DAVIS, CLERK

In the

# Supreme Court of the United States

OCTOBER TERM, 1964

No. 981

LORING J. WHITESIDE
*Petitioner*

*vs.*

STATE OF CONNECTICUT
*Respondent*

On Petition for a Writ of Certiorari to the Supreme Court of Errors of the State of Connecticut.

## BRIEF OF THE RESPONDENT IN OPPOSITION

GEORGE R. TIERNAN, Esq.,
RALPH H. CLARK, Esq.,
*Attorneys for Respondent.*
215 Church Street
New Haven
Connecticut 06510

THE HACK CO., NORTH HAVEN, CONN.

# CITATIONS


| | PAGE |
|---|---|
| *Conn.* vs. *Whiteside*, 368 U.S. 830 | 2, 3 |
| *Greenberg* vs. *Harrison*, 143 Conn. 731, 127 A.2d 827 | 2, 3 |
| *Jeffery* vs. *Fitch*, 46 Conn. 601 | 2, 4 |
| *State* vs. *Loring Whiteside*, 152 Conn. 204 A.2d 627 | 1 |
| *State* vs. *Whiteside*, 148 Conn. 208, 169 A.2d 260 (1961) | 1, 3 |
| *Whiteside* vs. *Slavin*, 309 F.2d 322 | 3 |
| *Wojculewicz* vs. *Cummings*, 143 Conn. 624, 631, 124 A.2d 886 | 2, 3 |

---

| | |
|---|---|
| General Statutes of Connecticut, 52-582 | 4 |
| Orfield: The Writ of Error, Coram Nobis in Civil Practice, 20 Va. L.R. 423 | 4 |

In the

# Supreme Court of the United States

OCTOBER TERM, 1964

No. 981

LORING J. WHITESIDE

*Petitioner*

*vs.*

STATE OF CONNECTICUT

*Respondent*

On Petition for a Writ of Certiorari to the Supreme Court of Errors of the State of Connecticut.

## BRIEF OF THE RESPONDENT IN OPPOSITION

## OPINION BELOW

Petition for Writ of Error, coram nobis or Review in Equity, dated October 26, 1964, was denied by the Connecticut Supreme Court of Errors without any Memorandum or Opinion, *State* vs. *Loring Whiteside*, 152 Conn. 204 A.2d 627. The opinion sought to be revoked by the petitioner is *State* vs. *Whiteside*, 148 Conn. 208, 169 A.2d 260 (1961), *certiorari*

*denied* October 9, 1961, *Conn.* vs. *Whiteside,* 368 U.S. 830. A habeas corpus petition was denied in the United States District Court for Connecticut, affirmed in the United States Court of Appeals (2nd Circuit) 309 F.2d 322 and *certiorari denied* April 15, 1963, 372 U.S. 966.

## JURISDICTION

More than three years has elapsed between the entry of judgment and filing the writ. The Connecticut Supreme Court of Errors has never decided whether a Writ of Error, coram nobis is available to a party seeking to vacate a judgment of the Supreme Court of Errors. *Greenberg* vs. *Harrison,* 143 Conn. 731, 127 A.2d 827; *Wojculewicz* vs. *Cummings,* 143 Conn. 624, 631, 124 A.2d 886. It has decided that the statute of limitations of three years for a new trial is applicable to a Writ of Error, coram nobis in civil cases. *Jeffery* vs. *Fitch,* 46 Conn. 601.

## QUESTIONS PRESENTED

The same questions were presented in the prior appeals from the original judgment and habeas corpus proceedings. In addition the petitioner has before the Connecticut Supreme Court of Errors an appeal from a denial of a petition for habeas corpus in the state court.

## STATEMENT OF CASES

The petitioner was convicted of 4 counts of criminal libel in the Court of Common Pleas for New Haven County on March 26, 1959. He was fined and sentenced to jail for 20 days and placed on probation at the conclusion of the jail sentence. He was represented by an attorney. An appeal was filed in the Connecticut Supreme Court of Errors and the conviction

was affirmed March 21, 1961. *State* vs. *Whiteside*, 148 Conn. 208, 169 A.2d 260. Motion for reargument was denied and certiorari was denied, *Conn* vs. *Whiteside*, 368 U.S. 830 (October 9, 1961). Following this the petitioner sought a writ of habeas corpus in the United States District Court for Connecticut, which was denied. The decision was affirmed by the Circuit Court of Appeals (2nd Circuit). *Whiteside* vs. *Slavin*, 309 F.2d 322. Certiorari was denied by this court, 372 U.S. 966.

The petitioner paid the fine imposed, served the jail sentence and the court that imposed sentenced discharged him from probation on June 26, 1964, so that the question now raised is moot.

Another appeal is pending in the Connecticut Supreme Court of Errors from the denial of a petition for habeas corpus in the state court.

## ARGUMENT

### I.

### THE DECISION OF THE CONNECTICUT SUPREME COURT OF ERRORS WAS CORRECT BECAUSE THE WRIT OF ERROR, CORAM NOBIS IS NOT APPLICABLE, OR AVAILABLE IN THIS SITUATION.

The Connecticut Supreme Court of Errors has not yet declared the availability of this remedy in order to revoke a judgment of that court.

*Greenberg* vs. *Harrison*, 143 Conn. 731;
*Wojculewicz* vs. *Cummings* 5 Conn. 624, 631.

This remedy does not lie as to issues which were adjudicated at the trial or which with diligence on the part of the petitioner might have been adjudicated.

*Greenberg* vs. *Harrison*, *supra*, p. 733.

Assuming the applicability of the remedy it does not apply here because it does not raise errors of fact which were not apparent on the record.

Orfield: The Writ of Error, Coram Nobis in Civil Practice, 20 Va. L.R. 423.

The petitioner is merely repeating claims, that he has unsuccessfully advanced in the many previous appeals and proceedings.

## II.

## The Writ Was Not Applied For Within A Reasonable Time.

Other remedies have been resorted to by the petitioner, but not a petition for a new trial. The state law provides procedure for a new trial within three years next after the rendition of the judgment complained of. General Statutes of Connecticut, 52-582.

It would seem that by analogy there is a three year statute of limitations governing the writ in Connecticut, if it is applicable.

*Jeffery* vs. *Fitch*, 46 Conn. 601;

Orfield: 20 Va. L.R., *supra*, p. 433.

Since this writ was requested by the petitioner more than three years after the judgment it seeks to revoke, it was not brought within the time required.

## CONCLUSION

In view of the fact that there is no basis for granting certiorari and the further fact that the sentence has been executed making the questions moot, certiorari should be denied for the third time.

Respectfully submitted,

GEORGE R. TIERNAN,

RALPH H. CLARK,

*Counsel for Respondent.*

April 7, 1965.

MICRO CARD 22
TRADE MARK ®

CD5292

MATTHEW BENDER & COMPANY

59-5

microcard